

IN THE SUPREME COURT OF FLORIDA

INQUIRY CONCERNING
A JUDGE NO. 02-487

Supreme Court Case
No.: SC03-1171

**APPENDIX TO
RESPONDENT'S MOTION TO DISMISS
THE PENDING CHARGES OR IN LIMINE TO EXCLUDE
THE PURPORTED HOLDER PAPER AND HOARD PAPER
BASED ON EVIDENTIARY IMPROPRIETIES AND
INCORPORATED MEMORANDUM OF LAW**

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APPENDIX

1

A

08/30/04 15:18 FAX

BEDELL, DITTMAR LAW FIRM

002

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400 North Tampa Street, Suite 5200
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U.S. Department of Justice
United States Attorney
Middle District of Florida

Post Office Box 600
200 West Forsyth Street, Room 700
Jacksonville, Florida 32201
904/252-2682
904/252-2620 (Fax)

80 North Hughey Avenue, Room 201
Orlando, Florida 32801
407/648-7500
407/648-7643 (Fax)

Reply to: Tampa

CONFIDENTIAL

December 20, 2002

Brooke S. Kennerly
Executive Director
Judicial Qualifications Commission
1110 Thomasville Road,
Tallahassee, Florida 32303-6224

Re: Circuit Judge Gregory P. Holder

Dear Ms Kennerly:

During the course of an investigation conducted by this office, information was provided to this office alleging that Circuit Judge Gregory P. Holder made a false statement in a matter within the jurisdiction of the executive branch of the Government of the United States, namely the Department of the Air Force. If these allegations are true, they could constitute a violation of federal law under Title 18, United States Code, Section 1001. These matters occurred during the time Gregory P. Holder held the position of Circuit Judge for the Thirteen Judicial Circuit.

In summary the allegations originate from two documents, copies of which are attached hereto as exhibits. The first document is a copy of a research paper submitted to the faculty of the Air War College at Maxwell Air Force Base by E. David Hoard in January 1996 in fulfillment of a writing assignment to complete the Air War College course. (Exhibit 1) A fax cover page for that document indicates that it was sent by facsimile on September 5, 1997, from E. David Hoard, who was then working in the Office of General Counsel, Department of the Air Force, to Judge Greg Holder. The handwritten markings on the first two pages of the research paper appear to be those of Judge Holder.

The second document is a copy of the research paper submitted to the faculty of the Air War College at Maxwell AFB by Gregory P. Holder in January 1998 in fulfillment of the writing assignment to complete the Air War College course. (Exhibit 2) Judge

COPY

Holder was then a Lieutenant Colonel in the U.S. Air Force Reserve.¹ The address section of the face page indicates that the writer is a Circuit Judge. Page two of that document contains a "Certificate" which provides:

I have read and understand the Academic Integrity Section of the Program Guide. I certify that I have not used another student's research work and that the creative process of researching, organizing, and writing this research report represents only my own work. . . .

This certificate was signed by Judge Holder.

A review of the two documents appears to indicate that approximately nine (9) pages of the 21-page research paper submitted by Judge Holder was copied verbatim or substantially verbatim from Mr. Hoard's paper, despite the certification by Holder that he had not used another student's research work and that the paper represented his own work. I have attached a second copy of Holder's paper which highlights those portions of Holder's paper which are literally word-for-word from Mr. Hoard's paper. (Exhibit 3)

Canon 1, of the Code of Judicial Conduct provides:

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.

Canon 2, provides, in pertinent part:

A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

The Commentary to Canon 2A provides that, "[t]he prohibition against behaving with impropriety or the appearance of impropriety applies to both the professional and personal conduct of a judge. . . . Actual improprieties include violations of the law. . . ."

¹ This Office has been advised by Air Force Judge Advocate General staff that the completion of the Air War College is generally a prerequisite for a Lieutenant Colonel to be promoted to the higher rank of Colonel. Subsequent to the completion of this course, Judge Holder was promoted to the rank of Colonel.

COPY

Should you have any questions or require any additional information regarding the allegations made to or investigated by this office, please let me know.

Very truly yours,

PAUL I. PEREZ
United States Attorney

By: 

JEFFREY S. DOWNING
Assistant United States Attorney
Deputy Chief, Public Corruption

Enclosure

COPY

B

BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION
STATE OF FLORIDA

INQUIRY CONCERNING A
JUDGE: GREGORY P. HOLDER
NO.: 02-487

SUPREME COURT
CASE NO.: SC03-1171

DEPOSITION OF JEFFREY DOWNING

August 31, 2004
Commencing at 10:00 a.m.

Page 29

Line:

11 Q Did you become the -- Under what circumstances did
12 you provide Exhibit 1 and Exhibit 2 to the JQC?

13 (A brief pause was had.)

14 A It was determined that the office would make the
15 referral to the JQC and to the Air Force.

16 BY MR. WEINSTEIN:

17 Q Okay. And did you participate in that
18 determination?

19 A I forwarded the documents to the JQC, and I
20 forwarded them to the Air Force.

C

DEPARTMENT OF THE ARMY
TEAM 6, 174th LEGAL SUPPORT ORGANIZATION (LSO)
STOVER UNITED STATES ARMY RESERVE CENTER
1420 BEACH DRIVE, N.E.
ST. PETERSBURG, FLORIDA

AFRC:CAL-O-CD

2 November 2003

MEMORANDUM FOR Colonel Tom Jaster, Judge Advocate General's Corps, United States Air Force

SUBJECT: Your Request For Information

1. On Sunday, October 5, 2003, I visited a rented storage facility of mine located in the Tampa Bay Area in order to clean up and to retrieve some of my military documents and records. I located a box that contained old military files and records. When I began going through the box, I attempted to organize it in some fashion and began throwing away items that had no apparent value to my military career like old paperwork, vouchers, etc. When I got to the bottom of the box, I found a white letter-size envelope addressed to me from the JFK School at Harvard University across which I had apparently written approximately five (5) years earlier the words "Schools/Misc." The envelope had been sent to me on or about February 19, 1998 at 3857 Siena Lane, Palm Harbor, FL 34685.

2. When I looked in the envelope, I discovered a number of copied pages and notes concerning a military school (Air War College) that AUSA Ken Lawson had given to me sometime in 1998 or 1999. In addition to the items in the envelope, several additional pages had spilled out into the bottom of the box that clearly appeared to be from the same "batch" of pages. I scooped them up and placed all of the items in the envelope.


3. As I now recall, Ken Lawson and I were in the Major Crimes Section together back in 1998 and he (as a Captain in the Marine Corps Reserve) discussed with me general military career moves to include possibly transferring to the Army Reserve and joining my unit in St. Petersburg, where at the time I was a Major serving as the Executive Officer of the JAG Detachment there. We discussed military schools, promotion opportunities and the like, and he informed me that he had information and materials on both the Naval as well as the Air War Colleges that he was willing to share. He never said where he got the items from, but gave me the materials strictly as a friend and colleague and with the intent of assisting me in any further military schooling I might choose (I was then already a graduate of the U.S. Army Command and General Staff College, among other service schools).

4. I received the materials from him but never pursued either the Air or Naval War Colleges because of civilian job time constraints and because the Military

Educational Level (MEL) credit awarded for them was not as high as that for the U.S. Army War College. As such, I felt that it was not worth the time required if I was not to get maximum MEL-Level credit. I never looked at the materials or saw them again until I dug them out of the bottom of the box. When I realized that they may have some relevance to the matter presently pending against Colonel Holder, I placed them back in the envelope and took them with me.

5. When I looked at them closely and recognized their potential relevance, I "Bates - stamped" them with the designation "KELjd1 - KELjd171" and took them directly to AUSA Jeffrey S. Downing, who is the Complainant in a matter before the Florida Judicial Qualifications Committee vis-a-vis Colonel Holder.

6. POC is the undersigned at (727) 456-2451.


JEFFREY J. DEL FUOCO
Lieutenant Colonel, JA, USAR
Team Commander

APPENDIX

2

A

BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION
STATE OF FLORIDA

INQUIRY CONCERNING A
JUDGE: GREGORY P. HOLDER
NO.: 02-487

SUPREME COURT
CASE NO.: SC03-1171

_____/

DEPOSITION OF JEFFREY J. DEL FUOCO
August 27, 2004
Commencing at 12:00 p.m.

Page 48

Line:

3 Q Okay. Mr. Del Fuoco, do you believe that January
4 12th or 13th, 2002, was, in fact, the date you found these
5 papers in your office?

6 A To the best I can determine, yes. It was one of
7 those days.

8 Q Okay. And tell me why you believe so, sir.

9 A Well, I know I found them in January of 2002.

Page 52-53

Line:

17 A -- just to the -- just to the -- The door opens in;
18 and the envelope was kind of just to the left of the door,
19 right inside the door; and I kicked it and I, you know -- I
20 was thinking, I don't know what that is. I turned the light
21 on. I took my stuff, put it down. Then I came back, and I
22 picked it up.

23 Q Okay. Describe the envelope for me.

24 A The envelope was a plain, manila envelope, you
25 know, standard-, you know, type, manila envelope with no
1 markings.

2 Q Eight-and-a-half by eleven?

3 A It was either eight-and-a-half by eleven; or it
4 might have been a little bit bigger; but that was that type
5 of a, you know, plain, manila envelope; and it was not -- As
6 I recall, it was folded in; but it wasn't, you know -- It
7 wasn't sealed.

Page 54

Line:

2 A I picked it up; and I felt inside, pulled the stuff
3 out; and the Exhibits 2 and 3 were in there; and there was a
4 note.

5 Q Okay.

6 A There was a note in there. The note was on a piece
7 of plain, white paper, like a typing sheet; and the note was
8 typed.

B

AFFIDAVIT
OF
LIEUTENANT COLONEL JEFFREY J. DEL FUOCO
~~ATTORNEY GENERAL~~

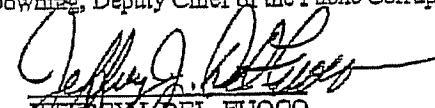
I hereby swear that the statements made in this affidavit are the truth, the whole truth and nothing but the truth, so help me God.

I am currently assigned as the Team Commander of the 174th Legal Support Organization, Team 6, in St. Petersburg, Florida at the U.S. Army Reserve (USAR) Center located at 1420 Beach Drive, SE. I presently have 8 or 9 Reserve JAs and two NCOs who work for me. In my civilian capacity, I am an Assistant United States Attorney with the United States Attorney's Office in Tampa, Florida. Part of my duties with the U.S. Attorney's Office have included the prosecution of corrupt police officers, among others. These cases have generated a fair amount of public attention in and around the Tampa Bay area, and as a result, many people (both military and civilian) have at least a generalized idea of what I do for a living as a civilian.

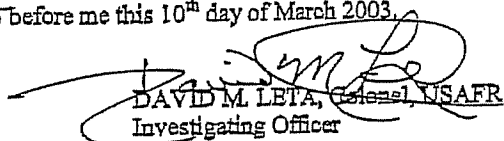
In early 2002 on a drill weekend, I was opening my office at the Reserve Center. I was the first one there on this particular Saturday morning at approximately 0645 - 0700. As I opened the door to the office, I found a plain, unmarked manila envelope (8 1/2" by 11") on the floor. It appeared that the envelope had been slipped under the door. I opened the envelope. Inside was a typewritten note, which said words to the effect "Col Del Fuoco or Mr. Del Fuoco, I thought you would be interested in this or something should be done about this", or words to that effect. It was signed, "A concerned citizen", "a concerned taxpayer" or in some other such manner. Along with the note were copies of what purported to be two Air War College student papers - one copy that appeared to have been faxed by an E. David Hoard from the General Counsel's Office of the Secretary of the Air Force to Judge Greg Holder, a local Circuit Judge in Hillsborough County, Tampa, Florida. The other copy was of a paper purported to be by "Lt Col Gregory P. Holder". Both were on the topic "An Analysis of the Anglo-American Combined Bomber Offensive in Europe During World War II, 1942-1945." I scanned both items. Much of the material contained in the purported "Lt Col Gregory P. Holder" paper appeared to have been copied straight from E. David Hoard's paper. Lt Col Holder's paper was purportedly submitted in 1998 to the Air War College. Mr. Hoard's paper was purportedly submitted in 1996.

At the St. Petersburg Army Reserve Center where I and my unit drill, there are elements of Military Police (MP), Chaplain Corps (Ch C) and Medical Corps (MC) personnel who drill there, as well as other USAR elements that I do not recall at this time. I estimate that over 400-500 Army personnel drill and work at the Center. There is also a large U.S. Coast Guard (USCG) facility directly adjacent to the USAR Center where both active duty and reserve USCG personnel perform duties. I believe that some of the USAR MPs may in their civilian capacities work in the Hillsborough County Sheriff's Office, which provides security for the County Courthouse and the judges who preside there. I took these items with me to the U.S. Attorney's Office. I eventually referred

them to AUSA Jeffrey S. Downing, Deputy Chief of the Public Corruption Section for the U.S. Attorney's Office.


 JEFFREY J. DEL FUOCO
 Lieutenant Colonel, Judge Advocate General's Corps
 United States Army Reserve

Sworn and subscribed to before me this 10th day of March 2003.


 DAVID M. LETA, Colonel, USAFR
 Investigating Officer

APPENDIX

3

A

BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION
STATE OF FLORIDA

INQUIRY CONCERNING A
JUDGE: GREGORY P. HOLDER
NO.: 02-487

SUPREME COURT
CASE NO.: SC03-1171

_____/

DEPOSITION OF JEFFREY J. DEL FUOCO
August 27, 2004
Commencing at 12:00 p.m.

Page 55

Line:

3 So I started to look at this stuff; and that's when
4 I noticed some similarities between what's marked as your
5 Exhibit 3 and Exhibit 2; and so then what I did was I
6 thought, Well, you know, I got things to do. I'm not going
7 to deal with this now; and I put all of the items back in
8 this envelope. I put them in my briefcase, locked my
9 briefcase, left my briefcase underneath the desk area where
10 I -- that I use, and I went to the gym. That's what I did.
11 I went to the Coast Guard weight room.

Page 64

Line:

23 Q Okay. Take them home with you?
24 A Yes.

Page 73

Line:

2 A Based upon my review of these documents and based
3 on the furtive nature of the way they were delivered to me,
4 the note, you know, all the things we've talked about here,
5 I placed them in an official file in the U.S. Attorney's
6 Office.
7 BY MR. WEINSTEIN:
8 Q Okay. You opened a blue sheet?
9 A Yeah. Put it to you this way. I opened the
10 matter, yes.

11 Q So chain of custody from the time you received --
12 you picked up the envelope and looked at the contents, put
13 it in your locked briefcase --
14 A Yes, sir.
15 Q -- was in your locked briefcase until you opened
16 your briefcase at the United States Attorney's Office.
17 A Monday morning.
18 Q And then you put a copy or --
19 A Well, I put what I received.
20 Q What you received, Exhibit Number 2, Exhibit Number
21 3, note and envelope --
22 A Note and envelope.
23 Q -- into some type of a file at the United States
24 Attorney's Office?
25 MR. LEE: Characterize it as an official file.

Page 75

Line:

17 Q -- in between -- Back to our chain of custody
18 question. Bear with me a second. You made no copies of
19 Exhibit 2 or Exhibit 3. The documents you received and the
20 note were, in fact, placed in the official file?
21 A Correct.

Page 82

Line:

1 Q Okay. And forgive me if I asked you this before;
2 but into this official file at the United States Attorney's
3 Office, you placed the copy you had received of it -- of
4 Exhibit Number 2; correct?
5 A Yes.
6 Q And the copy you received of Exhibit Number 3?
7 A Yes.
8 Q And the note?
9 A Yep.
10 Q And the envelope?
11 A Yes; and as I recall, they -- They all stayed in
12 the envelope. I mean, the envelope went into the file.

APPENDIX

4

A

BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION
STATE OF FLORIDA

INQUIRY CONCERNING A
JUDGE: GREGORY P. HOLDER
NO.: 02-487

SUPREME COURT
CASE NO.: SC03-1171

DEPOSITION OF JEFFREY DOWNING

August 31, 2004
Commencing at 10:00 a.m.

Page 7

Line:

18 A Mr. Del Fuoco told me that he had received two
19 papers that were slipped under his door at the Army Reserve
20 Center. I went to his office. He had the official file in
21 his possession. My recollection is that he opened it on his
22 desk, pulled out two documents, showed them to me; and
23 that's how I learned about it.

Page 12

Line:

5 A I observed a -- as best I recall, a manila envelope
6 that as I recall was folded in half. It was under the
7 documents.

Page 12

Line:

23 A I did not see any note at the time that Mr. Del
24 Fuoco showed me the documents, Respondent's Exhibits 1 and
25 Exhibits 2. Mr. Del Fuoco told me that he had received them

Page 13

Line:

9 Q Okay. And as you sit here today, sir, at any time
10 between the time that you first observed Respondent's
11 Exhibits 1 and 2 and the time you sit here today, did you
12 personally observe such a note?

13 A No.

14 Q Okay. Do you have any knowledge, sir, to the
15 extent that such a note ever existed what became of it?

16 A No, I do not.

17 Q Okay. Are you aware of any other witness who has
18 any knowledge of what became of such a note if, in fact, one
19 ever existed?

20 A No.

21 Q With respect to the manila envelope that you've
22 described previously, Mr. Downing, do you have any knowledge
23 about the existence or the current whereabouts, I should
24 say, of that envelope?

25 A No, I don't.

Page 14

Line:

1 Q Have you ever questioned Mr. Del Fuoco about the
2 whereabouts of the envelope?

3 A I believe at one point I asked him if he knew where
4 the envelope was and the note.

5 Q Okay. What was his response?

6 A I believe his response was that it would have been
7 in the file.

8 Q And did you thereafter check the file to determine
9 whether or not the envelope and note were, in fact, present?

10 A I did.

11 Q And what did you find, sir?

12 A I did not find a note and an envelope.

13 Q Okay. And after observing that no such note and no
14 such envelope were present in the file, did you thereafter
15 question Mr. Del Fuoco, again, about their whereabouts?

16 A I don't remember whether I had more than one
17 discussion with Jeff regarding that matter. I believe
18 the -- when that matter first came up, it was with respect
19 to -- to this proceeding --

20 Q Yes, sir.

21 A -- and I cannot recall whether I spoke with Jeff,
22 looked at the file, then spoke with him again. I believe
23 that -- I recall at least talking to him one time where I
24 inquired whether there were any other documents or anything
25 else that would be associated with the file, particularly

Page 15

Line:

- 1 whether he knew where the envelope and/or the note was.
2 Q Okay. And that's the conversation you recalled to
3 us earlier wherein Mr. Del Fuoco said they should be in the
4 file or words to that effect?
5 A Words to that effect, yes.

Page 21

Line:

- 9 Q Okay. And am I correct, sir, that Mr. Del Fuoco
10 showed you at least Exhibit 1 and Exhibit 2 early in 2002;
11 and you never saw these documents again until on or about
12 October 21, 2002?
13 A That's correct.

B

BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION
STATE OF FLORIDA

INQUIRY CONCERNING A
JUDGE: GREGORY P. HOLDER
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SUPREME COURT
CASE NO.: SC03-1171

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DEPOSITION OF JEFFREY J. DEL FUOCO
August 27, 2004
Commencing at 12:00 p.m.

Page 134 - 135

Line:

17 Q Did there come a point in time when you learned
18 that the note and the envelope were no longer available?

19 A Yeah. Yes.

20 Q Okay.

21 A I did. There was a time when I was made aware of
22 the fact that the note and envelope were no longer
23 available.

24 Q As you sit here today, is -- To the best of your
25 knowledge, sir, the note and envelope are lost; correct?

1 A I don't know. I mean, I -- Based on what I know,
2 which is not a whole lot at this point, aside from, you
3 know, what I've told you, I would assume that; but it's only
4 an assumption.

APPENDIX

5

A

BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION
STATE OF FLORIDA

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SUPREME COURT
CASE NO.: SC03-1171

DEPOSITION OF JEFFREY J. DEL FUOCO
August 27, 2004
Commencing at 12:00 p.m.

Page 119

Line:

2 The next day would have been, I guess, the 6th. I
3 went into the U.S. Attorney's Office, went through them in
4 more detail; and when I saw that they were germane to what
5 was going on, I immediately Bate stamped them, got them to
6 Downing; and I assume then Mr. Downing got them to
7 Mr. Pillans; but I Bate stamped them because I wanted to
8 make sure that they were identified.

B

BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION
STATE OF FLORIDA

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JUDGE: GREGORY P. HOLDER
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SUPREME COURT
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August 27, 2004

Commencing at 12:00 p.m.

Page 126 - 127

Line:

24 remember, though -- And you need to know this; and I believe
25 I told Mr. Pillans this -- In 1999 a colleague of mine who
1 is a partner in a firm in Pittsburgh by the name of William
2 J. Walls, he and I were on active duty together. We were in
3 the Reserves together. We worked as Deputy Attorneys
4 General with the Organized -- We worked the New Jersey
5 Division of Criminal Justice together. We're longtime
6 friends.
7 At the time Mr. Walls was a lieutenant colonel in
8 the Reserves in Pennsylvania, and we all stay close and
9 Mr. Walls -- I don't know if he was enrolled in the Air War
10 College or he was contemplating it. I don't remember, but I
11 recall telling Mr. Walls in a phone -- I believe it was a
12 phone conversation -- that I had some materials -- This is
13 back in 1999 now -- that had been given to me by a guy in
14 the office on the Air War College, and Walls asked me to
15 send him the materials, and I recall sending Mr. Walls -- I
16 don't remember what materials. I don't remember if it was
17 all of them. I don't remember, you know, if it's some of
18 what you guys have here; but I remember sending Mr. Walls
19 the materials.

Page 129

Line:

8 Q Okay. And your conversation with Mr. Walls about
9 this occurred when, sir? Most recent conversation where he

10 confirmed to you that he had some of the materials?
11 A Like January or February of this year because, you
12 know, it's one of these deals where, you know, you find this
13 stuff. I gave it to Downing. It gets to Mr. Pillans. It

18 Hey, wait a minute. Did I sent some stuff to Bill? So I
19 called him, and he said he generally remembered, but he
20 would look for them and voila. He found some items, and I
21 told Mr. Pillans about it.

APPENDIX

6

A

BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION
STATE OF FLORIDA

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NO.: 02-487

SUPREME COURT
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DEPOSITION OF JEFFREY J. DEL FUOCO
August 27, 2004
Commencing at 12:00 p.m.

Page 48 - 49

Line:

20 Q Are you referring to a document that's within the
21 scope?

22 A Yeah, I believe it is.

23 THE WITNESS: Is that within the --

24 MR. LEE: That's a document he sent to you.

25 MR. PILLANS: What about it?

1 MR. LEE: He wants to refer to it. Since he sent
2 it to you, you get to say yay or nay on that one.

3 MR. PILLANS: The other document he sent, is it
4 like this?

5 MR. LEE: Right.

6 THE WITNESS: Right.

7 MR. PILLANS: I don't care whether he refers to it
8 or not if it helps his testimony.

APPENDIX

7

A

BEDELL, DITTMAR, DeVAULT, PILLANS & COXE

PROFESSIONAL ASSOCIATION

ATTORNEYS AT LAW

THE BEDELL BUILDING

101 EAST ADAMS STREET

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CHARLES F. PILLANS, III
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JANE A. LESTER
DONALD B. MAIRS
PATRICK P. COLL
KEVIN B. COOK
RITA M. NICHOLS

CHESTER BEDELL
(1904-1981)

NATHAN BEDELL
(1918-1982)

C. HARRIS DITTMAR
RETIRED

MICHAEL D. WHALEN
OF COUNSEL

TELEPHONE (904) 353-0211
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April 22, 2003

Jeffrey S. Downing, Esquire
Assistant United States Attorney
Deputy Chief, Public Corruption
U.S. Department of Justice
400 N. Tampa Street, Suite 3200
Tampa, FL 33602

Re: JOC Inquiry No. 02-487

Dear Mr. Downing:

This is a follow-up to our telephone conversation on April 4, 2003 and your letter of December 20, 2002 to Brooke S. Kennerly regarding Circuit Judge Gregory P. Holder.

As I informed you on the telephone, I am Special Counsel to the Judicial Qualifications Commission assigned to investigate the matters raised in your December 20, 2002 letter.

In our conversation we discussed several issues. One was how to authenticate the research report submitted by Judge Holder to the War College and you indicated you could obtain for me the name of the person at the War College who was in a position to identify the report. You also advised me that the Air Force, acting through an Assistant U.S. Attorney in Atlanta, was investigating the matter. I would, at some point, like to contact him directly if you could provide me with his name and phone number.

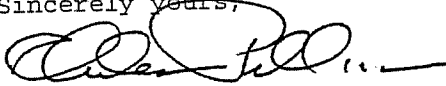
As I advised you, under the Rules of the Judicial Qualifications Commission, an inquiry of a judge such as this is confidential until such time as the Commission brings formal charges. I know that you, as Deputy Chief of

Jeffrey S. Downing, Esquire
April 22, 2003
Page 2

the Public Corruption Section of the U.S. Attorney's Office,
understand the reasons for confidentiality.

I look forward to receiving from you whatever
information you can provide to assist the JQC in
investigating this matter.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Tom MacDonald", with a horizontal line extending to the right.

CPP:sls
cc: Ms. Brooke S. Kennerly
Thomas C. MacDonald, Jr., Esquire

APPENDIX

8

A

AFFIDAVIT
OF
LIEUTENANT COLONEL JEFFREY J. DEL FUOCO
~~ATTEST~~

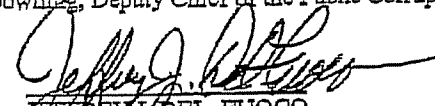
I hereby swear that the statements made in this affidavit are the truth, the whole truth and nothing but the truth, so help me God.

I am currently assigned as the Team Commander of the 174th Legal Support Organization, Team 6, in St. Petersburg, Florida at the U.S. Army Reserve (USAR) Center located at 1420 Beach Drive, SE. I presently have 8 or 9 Reserve JAs and two NCOs who work for me. In my civilian capacity, I am an Assistant United States Attorney with the United States Attorney's Office in Tampa, Florida. Part of my duties with the U.S. Attorney's Office have included the prosecution of corrupt police officers, among others. These cases have generated a fair amount of public attention in and around the Tampa Bay area, and as a result, many people (both military and civilian) have at least a generalized idea of what I do for a living as a civilian.

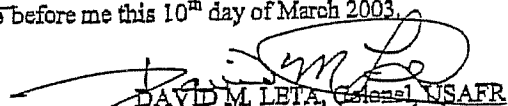
In early 2002 on a drill weekend, I was opening my office at the Reserve Center. I was the first one there on this particular Saturday morning at approximately 0645 - 0700. As I opened the door to the office, I found a plain, unmarked manila envelope (8 1/2" by 11") on the floor. It appeared that the envelope had been slipped under the door. I opened the envelope. Inside was a typewritten note, which said words to the effect "Col Del Fuoco or Mr. Del Fuoco, I thought you would be interested in this or something should be done about this", or words to that effect. It was signed, "A concerned citizen", "a concerned taxpayer" or in some other such manner. Along with the note were copies of what purported to be two Air War College student papers - one copy that appeared to have been faxed by an E. David Hoard from the General Counsel's Office of the Secretary of the Air Force to Judge Greg Holder, a local Circuit Judge in Hillsborough County, Tampa, Florida. The other copy was of a paper purported to be by "Lt Col Gregory P. Holder". Both were on the topic "An Analysis of the Anglo-American Combined Bomber Offensive in Europe During World War II, 1942-1945." I scanned both items. Much of the material contained in the purported "Lt Col Gregory P. Holder" paper appeared to have been copied straight from E. David Hoard's paper. Lt Col Holder's paper was purportedly submitted in 1998 to the Air War College. Mr. Hoard's paper was purportedly submitted in 1996.

At the St. Petersburg Army Reserve Center where I and my unit drill, there are elements of Military Police (MP), Chaplain Corps (Ch C) and Medical Corps (MC) personnel who drill there, as well as other USAR elements that I do not recall at this time. I estimate that over 400-500 Army personnel drill and work at the Center. There is also a large U.S. Coast Guard (USCG) facility directly adjacent to the USAR Center where both active duty and reserve USCG personnel perform duties. I believe that some of the USAR MPs may in their civilian capacities work in the Hillsborough County Sheriff's Office, which provides security for the County Courthouse and the judges who preside there. I took these items with me to the U.S. Attorney's Office. I eventually referred

them to AUSA Jeffrey S. Downing, Deputy Chief of the Public Corruption Section for the U.S. Attorney's Office.


JEFFREY J. DEL FUOCO
Lieutenant Colonel, Judge Advocate General's Corps
United States Army Reserve

Sworn and subscribed to before me this 10th day of March 2003.


DAVID M. LETA, Colonel, USAFR
Investigating Officer

B

BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION
STATE OF FLORIDA

INQUIRY CONCERNING A
JUDGE: GREGORY P. HOLDER
NO.: 02-487

SUPREME COURT
CASE NO.: SC03-1171

DEPOSITION OF JEFFREY J. DEL FUOCO
August 27, 2004
Commencing at 12:00 p.m.

Page 54

Line:

13 A Plain, white piece of typing paper; and there was
14 no signature. There was nothing like that on there, and it
15 contained a note. It -- Oh, jeez. It said something to the
16 effect of, Colonel Del Fuoco -- I don't know how they
17 spelled my name. I know it was wrong -- something should be
18 done about this. You should do something about this; or,
19 You probably would be interested in this; and then there was
20 a -- I don't remember how it was, you know, left in terms of
21 the signature;

Page 60

Line:

14 Q Understood. No markings on the note whatsoever?
15 In other words, no --
16 A No. There was no signature.

APPENDIX

9

A

BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION
STATE OF FLORIDA

INQUIRY CONCERNING A
JUDGE: GREGORY P. HOLDER
NO.: 02-487

SUPREME COURT
CASE NO.: SC03-1171

DEPOSITION OF JEFFREY DOWNING

August 31, 2004

Commencing at 10:00 a.m.

Page 15

Line:

- 6 Q All right. Thank you, sir. Would it be fair to
7 say, Mr. Downing, the U.S. Attorney's Office frequently
8 comes in possession of documents which could be evidence in
9 some type of proceeding?
10 A I think that that's beyond the scope.
11 Q Would it be fair to say, Mr. Downing, that the U.S.
12 Attorney's Office is experienced in maintaining chains of
13 custody with respect to documents?
14 A I believe that's also outside the scope.
15 Q Would it be fair to say, Mr. Downing, that the U.S.
16 Attorney's Office doesn't lose evidence that could be
17 germane to proceedings?
18 A That's also outside the scope.

Page 23 - 24

Line:

- 1 MR. WEINSTEIN: Understood. Okay. So the record
2 is clear, with respect to what you have denominated as
3 the USAO jacket, okay, you will not permit me to inquire
4 regarding the documents that are in the jacket; correct?
5 MR. LEE: Absolutely not. They're beyond the scope
6 of Mr. Perez's authorization.
7 MR. WEINSTEIN: I understand. I just want to make
8 sure we've got a clean record. Okay. And you're not
9 going to let me ask any questions regarding any matters
10 contained within that file?
11 MR. LEE: You mean for you to review it and then
12 ask questions? Absolutely not. It's beyond the scope

13 of Mr. Perez's authorization.

14 MR. WEINSTEIN: Okay. And there is, in fact, sir,
15 so that the record is clear, additional documents that
16 relate to this matter that you have not brought today;
17 right, sir?

18 MR. LEE: Absolutely because they're beyond the
19 scope of Mr. Perez's authorization in this mater.

20 MR. WEINSTEIN: I understand. I just want to make
21 sure the record is clear that we've established that
22 there is a jacket that contains documents that the U.S.
23 Attorney's Office has asserted that are beyond the
24 scope; right? And that there are other documents back
25 at the U.S. Attorney's Office that are beyond the scope
1 as that scope has been determined by Mr. Perez or by his
2 designator?

3 MR. LEE: Absolutely.

4 MR. WEINSTEIN: Okay.

5 MR. LEE: And that's what I'm here to communicate
6 very clearly.

7 MR. WEINSTEIN: Okay. And I understand very
8 clearly. I just want to make sure we've got it on the
9 record.

10 MR. LEE: I think it is.

11 BY MR. WEINSTEIN:

12 Q Okay. Did you have any involvement in what I'll
13 call the Holder matter between early 2002 when Mr. Del Fuoco
14 first showed you Respondent's Exhibit 1 and Exhibit 2 and
15 October 21, 2002, when this matter was assigned to you?

16 (A brief pause was had.)

17 A I think that that's beyond the scope.

B

BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION
STATE OF FLORIDA

INQUIRY CONCERNING A
JUDGE: GREGORY P. HOLDER
NO.: 02-487

SUPREME COURT
CASE NO.: SC03-1171

_____/

DEPOSITION OF JEFFREY J. DEL FUOCO
August 27, 2004
Commencing at 12:00 p.m.

Page 82- 83

Line:

- 21 Q Okay. Did you or anyone else to the best of your
22 knowledge do a fingerprint analysis on the note?
23 A I've been advised it's outside the scope.
24 Q Okay. To the best of your knowledge -- Well, did
25 you or anyone else to the best of your knowledge run any DNA
1 or any other analysis whatsoever on the note?
2 (A brief pause was had.)
3 A After consultation I believe the answer would be
4 outside the scope of authorization.

C

Main Office
400 North Tampa Street, Suite 3200
Tampa, Florida 33602
813/274-6000
813/274-6200 (Fax)

2110 First Street, Suite 3-137
Fort Myers, Florida 33901
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239/461-2219 (Fax)



U.S. Department of Justice
United States Attorney
Middle District of Florida

300 North Hogan Street, Suite 700
Jacksonville, Florida 32202-4270
904/301-6300
904/301-6310 (Fax)

80 North Hughes Avenue, Room 201
Orlando, Florida 32801
407/648-7500
407/648-7643 (Fax)

Reply to: Jacksonville, Florida

PIP/rgd

via Facsimile and U.S. Mail

December 18, 2003

Virginia Z. Houser, Esq.
Bales, Weinstein, P.A.
625 E. Twiggs St., Suite 100
Tampa, Florida 33602
Fax: (813) 224-9109

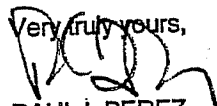
Re: JOC Inquiry No. 02-487

Dear Ms. Houser:

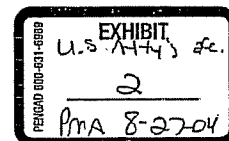
This is in response to your letter of December 8, 2003 to First Assistant United States Attorney James R. Klindt. You have asked for authority to depose AUSA Jeffrey Del Fuoco and AUSA Jeffrey Downing in the referenced Florida Judicial Qualifications Commission matter. While you have not specified your areas of inquiry, you represent that it is being conducted pursuant to the provisions of 28 C.F.R. §§ 1621 et seq.

This letter authorizes the depositions of AUSA Del Fuoco and AUSA Downing but only as to those matters contained in items 1 through 5 of my December 18, 2003 letter to Mr. Charles Pillans.

Very truly yours,


PAUL I. PEREZ
United States Attorney

cc: Charles P. Pillans, Esq.



D

Main Office
400 North Tampa Street, Suite 3200
Tampa, Florida 33602
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813/274-6200 (Fax)

2110 First Street, Suite 3-137
Fort Myers, Florida 33901
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239/461-2219 (Fax)



U.S. Department of Justice
United States Attorney
Middle District of Florida

300 North Hogan Street, Suite 700
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80 North Hughes Avenue, Room 201
Orlando, Florida 32801
407/648-7500
407/648-7643 (Fax)

Reply to: Jacksonville, Florida

PIP/rgd

via Facsimile and U.S. Mail

December 18, 2003

Charles P. Pillans, III, Esq.
Bedell, Dittmar, DeVault, Pillans & Cox. P.A.
101 East Adams Street
Jacksonville, Florida 32202
Fax: (904) 353-9307

Re: JOC Inquiry No. 02-487

Dear Mr. Pillans:

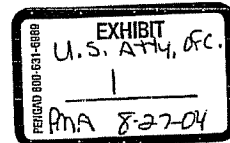
This is in response to your letter of December 15, 2003 to AUSA Jeffrey S. Downing. Pursuant to the provisions of 28 C.F.R. §§ 1621 et seq., I am authorizing AUSA Downing, AUSA Jeffrey Del Fuoco and AUSA Kenneth Lawson to give testimony at a Judicial Qualifications Commission Hearing scheduled to begin January 20, 2004 in Tampa in regards to the following limited areas:

1. to identify copies of the alleged plagiarized paper;
2. to identify copies of the paper written by Lieutenant Colonel Hoard from which the plagiarized material was taken;
3. to identify the letter dated December, 20, 2002 referring the matter to the Judicial Qualifications Commission;
4. as to AUSA Del Fuoco only, to identify the documents he received from AUSA Lawson which bear baté stamps numbers KELjd1 -KELjd 71;
and
5. as to AUSA Lawson only, to identify the papers which he gave to AUSA Del Fuoco.

This authority does not extend to any questions directed to AUSA Downing or AUSA Del Fuoco "to explain briefly the investigation by the U.S. Attorneys Office, specifically, the beginning and ending dates that the file was open." It is the policy of this Office neither to confirm or deny the existence of an investigation.

Very truly yours,

PAUL I. PEREZ
United States Attorney



E

Main Office
400 North Tampa Street, Suite 3200
Tampa, Florida 33602
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300 North Hogan Street, Suite 700
Jacksonville, Florida 32202
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2110 First Street, Suite 3-137
Fort Myers, Florida 33901
239/461-2200
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U.S. Department of Justice
United States Attorney
Middle District of Florida

501 W. Church St., Suite 300
Orlando, Florida 32805
407/648-7500
407/648/7643 (Fax)

Reply to: **Jacksonville, FL**

August 26, 2004

FACSIMILE: (813) 224-9109
and
HAND DELIVERY

David B. Weinstein, Esquire
625 East Twiggs Street, suite 100
Tampa, Florida 33602

Re: Deposition; Jeffrey J. Del Fuoco

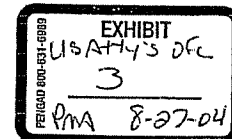
Dear Mr Weinstein:

This will summarize our conversation of today, wherein we discussed the U.S. Attorney's scope determination regarding the permissible testimony of Mr. Del Fuoco as an Assistant U.S. Attorney. I informed you the U.S. Attorney's scope determination addresses any information related to, based upon or contained in the files of the U.S. Attorney, as well any information known by Mr. Del Fuoco because of his performance of official duties as an Assistant U.S. Attorney or because of his official status as an Assistant U.S. Attorney. Any information not so implicating U.S. Attorney information or Mr. Del Fuoco's official duties or status as an Assistant U.S. Attorney is not addressed by the U.S. Attorney's scope determination. Should you require further discussion, please do not hesitate to address it with me when we meet prior to Mr. Del Fuoco's deposition.

Sincerely,

PAUL I. PEREZ
United States Attorney

RAKPH J. LEE
Assistant United States Attorney



APPENDIX

10

A

BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION
STATE OF FLORIDA

INQUIRY CONCERNING A
JUDGE: GREGORY P. HOLDER
NO.: 02-487

SUPREME COURT
CASE NO.: SC03-1171

DEPOSITION OF JEFFREY J. DEL FUOCO
August 27, 2004
Commencing at 12:00 p.m.

Page 82

Line:

- 1 Q Okay. And forgive me if I asked you this before;
2 but into this official file at the United States Attorney's
3 Office, you placed the copy you had received of it -- of
4 Exhibit Number 2; correct?
5 A Yes.
6 Q And the copy you received of Exhibit Number 3?
7 A Yes.
8 Q And the note?
9 A Yep.
10 Q And the envelope?
11 A Yes; and as I recall, they -- They all stayed in
12 the envelope. I mean, the envelope went into the file.
13 Q Okay.
14 A The manila envelope I referred to.

APPENDIX

11

A

BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION
STATE OF FLORIDA

INQUIRY CONCERNING A
JUDGE: GREGORY P. HOLDER
NO.: 02-487

SUPREME COURT
CASE NO.: SC03-1171

DEPOSITION OF JEFFREY DOWNING

August 31, 2004
Commencing at 10:00 a.m.

Page 13

Line:

- 14 Q Okay. Do you have any knowledge, sir, to the
15 extent that such a note ever existed what became of it?
16 A No, I do not.
17 Q Okay. Are you aware of any other witness who has
18 any knowledge of what became of such a note if, in fact, one
19 ever existed?
20 A No.
21 Q With respect to the manila envelope that you've
22 described previously, Mr. Downing, do you have any knowledge
23 about the existence or the current whereabouts, I should
24 say, of that envelope?
25 A No, I don't.

Page 25

Line:

- 7 Q Okay. When Mr. Del Fuoco first showed you these
8 documents in early 2002, did you read them word for word?
9 A No, I did not.
10 Q Okay. And so you could not sit here today under
11 oath and tell me that when you looked at these documents on
12 or about October 21, 2002, that you could positively
13 identify them as the documents that Mr. Del Fuoco showed
14 you; correct?
15 A I couldn't do that.